

PAUL J. RIEHLE (SBN 115199)  
 paul.riehle@faegredrinker.com  
**FAEGRE DRINKER BIDDLE & REATH LLP**  
 Four Embarcadero Center  
 27th Floor San Francisco, CA 94111  
 Telephone: (415) 591-7500  
 Facsimile: (415) 591-7510

CHRISTINE A. VARNEY (*pro hac vice*)  
 cvarney@cravath.com  
 KATHERINE B. FORREST (*pro hac vice*)  
 kforrest@cravath.com  
 GARY A. BORNSTEIN (*pro hac vice*)  
 gbornstein@cravath.com  
 YONATAN EVEN (*pro hac vice*)  
 yeven@cravath.com  
 LAUREN A. MOSKOWITZ (*pro hac vice*)  
 lmoskowitz@cravath.com  
 M. BRENT BYARS (*pro hac vice*)  
 mbyars@cravath.com

**CRAVATH, SWAINE & MOORE LLP**  
 825 Eighth Avenue  
 New York, New York 10019  
 Telephone: (212) 474-1000  
 Facsimile: (212) 474-3700

*Attorneys for Plaintiff Epic Games, Inc.*

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**OAKLAND DIVISION**

EPIC GAMES, INC.,  
*Plaintiff, Counter-defendant,*  
 v.  
 APPLE INC.,  
*Defendant, Counterclaimant.*

Case No. 4:20-cv-05640-YGR-TSH  
 Case No. 4:11-cv-06714-YGR-TSH  
 Case No. 4:19-cv-03074-YGR-TSH

IN RE APPLE IPHONE ANTITRUST  
 LITIGATION

**EPIC GAMES, INC.'S  
 ADMINISTRATIVE MOTION TO  
 SEAL PORTION OF TRANSCRIPT**

DONALD R. CAMERON, *et al.*,  
*Plaintiffs,*  
 v.  
 APPLE INC.,  
*Defendant.*

Judge: Hon. Magistrate Thomas S.  
 Hixson

1 Pursuant to Federal Rule of Civil Procedure 26(c), Plaintiff Epic Games, Inc. (“Epic”) moves the Court to seal lines 11 through 15 on page 28 of the transcript of a hearing held before the Court on December 30, 2020. A redacted version of the transcript is submitted herewith, and an unredacted version of the transcript with the proposed redactions highlighted, is being filed under seal concurrently with this motion.

2 Epic is filing this motion because Apple Inc. (“Apple”) designated a document (APL-APPSTORE\_00227526, filed under seal at Dkt. 217-1) as “CONFIDENTIAL” under the protective orders entered in the above-captioned cases. (*Epic Games, Inc. v. Apple Inc.*, No. 20-cv-05640-YGR-TSH, Dkt. 112; *In re Apple iPhone Antitrust Litigation*, No. 4:11-cv-06714-YGR-TSH, Dkt. 199; *Donald R. Cameron, et al. v. Apple Inc.*, No. 4:19-cv-03074-YGR-TSH, Dkt. 85.) Counsel for Epic referenced two numbers contained within the document at a hearing before the Court on December 30, 2020, and then immediately stopped and called the Court’s attention to the issue. (*See* 12/30/20 Hr’g Tr. at 28:11-15.) Later that day, Apple insisted that Epic file a motion to seal today, December 31, 2020, or else it would seek sanctions, claiming that Epic’s actions were a disclosure of “HC-AEO” information. (Ex. A.) In fact, the information was designated as “CONFIDENTIAL”. (Dkt. 217-1.) Epic does not concede the appropriateness of that designation or that any usable or meaningful information could be derived from this portion of the transcript, but is nonetheless making the motion in light of Apple’s request.

3 Civil Local Rule 79-5 provides that documents, or portions thereof, may be sealed if a party “establishes that the documents, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law”. Civ. L.R. 79-5(b). Under this standard, a party seeking to seal a document generally must overcome the “strong presumption in favor of access” that applies to court documents other than those that are traditionally kept secret. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (citations omitted). However, the “public has less of a need for access to court records attached only to non-dispositive motions because those documents are often ‘unrelated, or only tangentially

related to the underlying cause of action.” *Id.* at 1179 (citations omitted). Instead, a “‘good cause’ showing under Rule 26(c) [of the Federal Rules of Civil Procedure] will suffice to keep sealed records attached to non-dispositive motions.” *Id.* at 1180; *In re NCAA Student-Athlete Name & Likeness Licensing Litig.*, 2013 WL 3014144, at \*1 (N.D. Cal. Jun. 17, 2013). A party seeking to seal such material must make a “particularized showing of good cause with respect to any individual document.” *San Jose Mercury News, Inc. v. U.S. Dist. Court, N. Dist. (San Jose)*, 187 F.3d 1096, 1103 (9th Cir. 1999). Sealing requests must also be “narrowly tailor[ed].” Civ. L.R. 79-5(b).

Epic now requests that the Court seal the following document as described below:

Document	Redacted Material
Transcript of hearing on December 30, 2020	Page 28, lines 11 through 15

Dated: December 31, 2020

CRAVATH, SWAINE & MOORE LLP  
 Christine Varney  
 Katherine B. Forrest  
 Gary A. Bornstein  
 Yonatan Even  
 Lauren A. Moskowitz  
 M. Brent Byars

Respectfully submitted,

By: /s/ Lauren A. Moskowitz  
 Lauren A. Moskowitz

*Attorneys for Plaintiff Epic Games, Inc.*